

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ROBERT MILLER

§

v.

§

CIVIL ACTION NO. 6:18cv378

UNIVERSITY OF TEXAS MEDICAL  
BRANCH, ET AL.

§

**MEMORANDUM ORDER OVERRULING PLAINTIFF'S OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

The Plaintiff Robert Miller, a prisoner of the Texas Department of Criminal Justice, Correctional Institutions Division proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged deprivations of his constitutional rights. This Court referred the matter to the Honorable John D. Love, United States Magistrate Judge, for consideration pursuant to applicable laws and orders of this court.

After review of the pleadings, the magistrate judge recommended dismissal of the lawsuit because Plaintiff had previously filed at least three lawsuits or appeals which were dismissed as frivolous or for failure to state a claim upon which relief may be granted. As a result, Plaintiff is barred under 28 U.S.C. §1915(g) from proceeding *in forma pauperis* unless he is under imminent threat of serious physical injury at the time of filing the lawsuit, a showing which the magistrate judge concluded that Plaintiff wholly failed to make. The court has received and considered the Report and Recommendation of the United States Magistrate Judge, along with the record, pleadings and all available evidence.

Plaintiff did not file objections to the magistrate judge's Report and Recommendation *per se*, but filed a motion to amend his complaint containing one sentence saying "my life is in imminent danger, Hartless paid gang members to kill." In the interests of justice, the Court will assume this

sentence objects to the magistrate judge's determination that Plaintiff failed to show imminent danger.

The court conducted a *de novo* review of the objections in relation to the pleadings and the applicable law. *See FED. R. CIV. P. 72(b)*. After careful consideration, the court concludes Plaintiff's objections lack merit. *See Stine v. Federal Bureau of Prisons Designation and Sentence Computation Unit*, 571 F.App'x 352, 2014 U.S. App. LEXIS 10977, 2014 WL 2611327 (5th Cir., June 12, 2014) (conclusory assertions of previous assaults or threats at unspecified times does not rise to the level of showing imminent danger for purposes of 28 U.S.C. §1915(g)).

ORDER

Accordingly, Plaintiff's objections are **OVERRULED**. The findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. It is

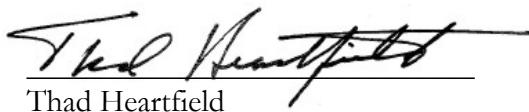
**ORDERED** that the Plaintiff's motion for leave to proceed *in forma pauperis* (docket no. 2) is **DENIED**. It is further

**ORDERED** that the above-styled civil action is **DISMISSED WITH PREJUDICE** as to the refiling of another *in forma pauperis* lawsuit raising the same claims as herein presented, but without prejudice to the refiling of this lawsuit without seeking *in forma pauperis* status and upon payment of the statutory \$400.00 filing fee. It is further

**ORDERED** that should the Plaintiff pay the full filing fee of \$400.00 within 15 days after the date of entry of final judgment in this case, he shall be allowed to proceed in the lawsuit as through the full fee had been paid from the outset. Finally, it is

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendations.

**SIGNED** this the 4 day of **February, 2019**.



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Thad Heartfield  
United States District Judge